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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 TOREY ELLIS,
11 Plaintiff,

12 v.

13 ELAINE DUKE, Secretary, Department of
Homeland Security, Transportation Security
Administration,

15 Defendant.

Case No. 3:17-CV-00119-MMD-WGC

ORDER

**STIPULATION FOR RELIEF FROM
REQUIREMENT THAT PERSON WITH
SETTLEMENT AUTHORITY ATTEND
SETTLEMENT CONFERENCE**

EXPEDITED REVIEW REQUESTED

18 An Early Neutral Evaluation Session (“ENE”) is scheduled in this case for November 8, 2017, at
19 1:30 p.m. (ECF No. 18). The Order setting the ENE states that a client representative “with complete
20 authority to negotiate and consummate a settlement shall be in attendance at the [ENE].” (ECF No. 18,
21 at p. 1-2). For the reasons argued below, Plaintiff Torey Ellis and Defendant Elaine Duke, Secretary of
22 the United States Department of Homeland Security, Transportation Security Administration, hereby
23 stipulate and agree that Assistant United States Attorney (“AUSA”) Holly A. Vance may participate in

24

1 the ENE in person as the sole representative for the government with an agency attorney available by
2 telephone to answer any questions that might arise.

3 **ARGUMENT**

4 The federal government is unlike any other litigant. *U.S. v. U.S. Dist. Court for the N. Mariana*
5 *Islands*, 694 F.3d 1051, 1059 (9th Cir. 2012). Because the government handles a very large number of
6 cases, it would be impractical, if not physically impossible, for those with settlement authority to prepare
7 for – and appear at – all settlement conferences. *Id.* The Advisory Committee notes that accompany the
8 1993 amendments to Federal Rule of Civil Procedure 16 acknowledge the unique position that the federal
9 government occupies as a litigant: “Particularly in litigation in which governmental agencies * * * are
10 involved, there may be no one with on-the-spot settlement authority, and the most that should be expected
11 is access to a person who would have a major role in submitting a recommendation to the body or board
12 with ultimate decision-making responsibility.”

13 The government delegates settlement authority to select individuals in order to promote
14 centralized decision-making. *U.S. Dist. Court for the N. Mariana Islands* at 1059-6060. Centralized
15 decision-making promotes three important government objectives. *Id.* First, it allows the government to
16 act consistently in important cases. *Id.* Second, centralized decision-making allows the executive branch
17 to pursue policy goals more effectively by placing ultimate authority in the hands of a few officials. *Id.*
18 Third, by giving authority to high-ranking officials, centralized decision-making better promotes political
19 accountability. *Id.* In light of these principles, the Ninth Circuit has determined that the district court
20 should adopt a “practical approach” in deciding whether to require a government representative with full
21 settlement authority to attend a pre-trial conference. According to the Ninth Circuit, only as a “last resort”
22 should the district court require an official with full settlement authority to participate in a pre-trial
23 conference in person. *Id.*

24

1 Consistent with *U.S. Dist. Court for the N. Mariana Islands*, the government routinely requests
2 that the district court allow the attorney assigned to the case to appear in person at an ENE as the sole
3 representative for the government. Before the ENE, that attorney discusses the case thoroughly with those
4 government representatives who do have settlement authority in order to determine the range of
5 settlement offers that would be acceptable to the government. This approach has not hampered settlement
6 discussions or created an impediment to settlement in the hundreds of settlement conferences in which
7 the government has participated over the years. In fact, hundreds of cases involving the government have
8 settled over the years utilizing this approach. Accordingly, the parties stipulate and agree that AUSA
9 Vance may participate in the ENE as the sole representative for the government with an agency attorney
10 available by telephone.

11 **CONCLUSION**

12 For the reasons argued above, the parties stipulate that AUSA Vance may appear at the ENE as
13 the sole representative for the government with an agency attorney available by telephone.

14 DATED: October 5, 2017.

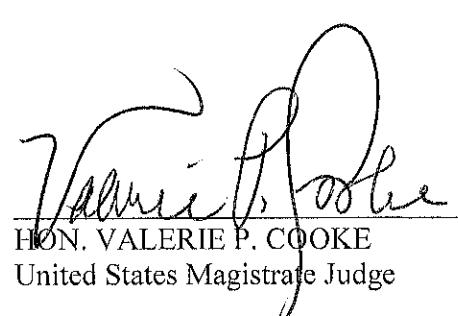
15 STEVEN W. MYHRE
16 Acting United States Attorney

17 s/ Kenneth J. McKenna
18 KENNETH J. MCKENNA
19 Attorney for Plaintiff

20 s/ Holly A. Vance
21 HOLLY A. VANCE
22 Attorneys for Defendant

23 IT IS SO ORDERED:

24 DATED: October 6th, 2017.


HON. VALERIE P. COOKE
United States Magistrate Judge